

## **APPENDIX D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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ROBERT R. DI TROLIO  
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WD. OF TENN. MEMPHIS

DARIUS LITTLE, )  
 )  
Plaintiff, )  
 )  
v. ) No. 96-2520-M1/A  
 )  
SHELBY COUNTY, et al., )  
 )  
Defendants. )

OPINION FINDING DEFENDANTS IN CONTEMPT OF COURT

Before the Court are Plaintiff's Motion To Cite Defendants For Contempt Of Court filed on June 29, 2000, and Plaintiff's Supplemental Motion To Cite Defendants For Contempt Of Court filed on September 1, 2000. The Court held hearings on these Motions on September 22, 2000, and on October 16-19, 2000. The Court also heard oral arguments on the Motions on December 8, 2000.

On November 12, 1997, District Judge Jerome Turner found that:

Gang involvement is very prevalent in the Shelby County Jail. Gangs known as the Gangster Disciples and Vice Lords are present in the Shelby County Jail. Gang members are responsible for many violent acts, stabbings and rapes in the Shelby County Jail.

(Findings of Fact and Conclusions of Law at 5, Little v. Shelby Co., Nov. 12, 1997.) Those same conditions exist unchanged in the Shelby County Jail today. The conditions exist because Shelby County and its Sheriff have failed to organize and utilize their resources to implement remedial steps ordered by Judge Turner in

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his order of November 12, 1997, granting injunctive relief. For the reasons stated below, the Court FINDS that Defendants are in contempt of Court.

## **I. Facts and Procedural History**

### **A. Procedural History**

This case<sup>1</sup> was originally filed on May 14, 1996, as a case alleging violation of Plaintiff Darius Little's civil rights under 42 U.S.C. § 1983. The case was originally assigned to the late Honorable Jerome Turner and was transferred to this Court on March 6, 2000. On September 12, 1996, Judge Turner entered a Consent Order Stipulating Liability For Injunctive Relief Purposes Only: And Establishing Procedure For Remedy, in which Defendants stipulated to liability under § 1983 for violation of Plaintiff's Eighth Amendment rights. Subsequently, the Court, on November 12, 1997, entered its Order Granting Injunctive Relief To Remedy

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<sup>1</sup> By order of April 14, 1998, the Court certified a class of all persons who were at that time, or would in the future be, incarcerated in the Shelby County jail. That Order by Judges Turner and McCalla effected the consolidation of two inmate rape cases and provided for the implementation, monitoring, and enforcement of injunctive relief in this case. Consent Order of April 14, 1998, in Banks v. Shelby County, Civil Action No. 96-2874 (filed on August 16, 1996). The consolidated cases included Banks v. Shelby County, Id., and Hill v. Shelby County, Civil Action No. 96-2622 (filed on June 17, 1996).

In addition, Judge Gibbons presided over Myles v. Totten, No. 87-2191, involving inmate violence in the Shelby County Jail that was filed on March 18, 1987, and ended on July 7, 1993. That case was a class action that provided for implementation, monitoring, and enforcement of injunctive relief.

Unconstitutional Conditions In Shelby County Jail ("Court Order") along with Findings Of Fact And Conclusions Of Law In Support Of Order Granting Injunctive Relief To Remedy Unconstitutional Conditions In The Shelby County Jail.

**B. Judge Turner's Findings Of Fact And Conclusions Of Law Granting Injunctive Relief To Remedy Unconstitutional Conditions In The Shelby County Jail, November 12, 1997**

Judge Turner made several findings of fact that are hereby incorporated into the findings of fact of this Opinion for the purposes of ruling on Plaintiff's Motion. Some of the specific findings of fact bear repeating in this action for the sake of context.

Plaintiff Darius Little, while incarcerated in the Shelby County Jail (the "Jail") on September 27, 1995, was raped by three gang members who were also incarcerated in the Jail. Judge Turner specifically found that there was no guard present to assist Plaintiff while he was being raped. Judge Turner also found that while Plaintiff was incarcerated in the Jail, there were rarely guards present to observe the inmates. At the time of Judge Turner's findings, the Jail had 2,700 beds available for inmates, even though the facility had originally been built with capacity for only 1,170 beds. The Court also found that the Jail routinely housed inmates together prior to fully classifying them.<sup>2</sup> The

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<sup>2</sup> Prior to the Court Order, inmates were brought into the intake area of the Jail where they were partially processed, i.e., the Jail made inquiries into their criminal history,

Judge found that the preclassification system in place did not consider data on the detainees' criminal history from the National Crime Information Center. The failure to fully classify detainees prior to assigning them to cells with a cellmate created the possibility that "an arrestee charged with a traffic violation but with no prior criminal record can be locked up with a prisoner who has a violent criminal history." (Findings of Fact and Conclusions of Law, entered November 12, 1997.)

Judge Turner also specifically found that the guards assigned to the pods,<sup>3</sup> which are groups of 23 cells, were stationed outside the pods and had no direct line of sight to the interior of the cells from their monitoring station. In order to view the inside of a cell, the guard must either look through a window in the back of the cells facing the catwalk, or proceed into the pod to view the cell from the front. The Judge found very high noise levels in the jail that make it difficult for guards to hear the screams of inmates in the pods.

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fingerprinted them, etc. However, the classification process was only partially completed when the inmates were each put into a temporary cell with another inmate on the lower level in an area designated as "Classification Housing." (Ex. 39.) This procedure created the possibility that inmates could be placed in a cell together without knowing if one inmate was being put in danger of physical or sexual assault because the Jail did not know the criminal history of the inmates.

<sup>3</sup> The terms "pod" and "cell block" are used interchangeably in this Opinion. Judge Turner referred to the groups of 23 cells that open into a day room as cell blocks, but most of the witnesses in the contempt hearings referred to them as pods.

Judge Turner also made specific findings of fact with regard to the prevalence of gangs within the jail. Judge Turner found that gangs such as the Gangster Disciples and the Vice Lords are present in the Jail and that they commit many violent acts such as stabbings and rapes. The gangs regularly post rules inside the pods for other inmates to follow. Furthermore, the guards have difficulty observing when several gang members enter the cell of another inmate.

Judge Turner also found that there were several factors that would reduce the risk of violence and sexual assault in the Jail such as (1) continual supervision of the inmates, (2) proper classification and separation of inmates who are likely to assault other inmates, and (3) separation of inmates who are likely to be victims of assault. Judge Turner also found that increased guard supervision would reduce the likelihood of physical and sexual assaults on inmates in the cell blocks and that continuous twenty-four hour supervision of the cell block should decrease physical and sexual assaults in the Jail. In addition, the original plan proposed by Defendants stated that it met the requirements of the Prison Litigation Reform Act.

**C. Judge Turner's Order Granting Injunctive Relief To Remedy Unconstitutional Conditions In The Shelby County Jail, November 12, 1997 (the "Court Order")**

The Findings of Fact accompanied the Court Order, entered on November 12, 1997. In the Court Order, Judge Turner required

several changes to the manner in which the Shelby County Jail is operated:

1. Classification. Within 90 days of the entry of this order, each inmate admitted to the Shelby County Jail will be confidentially interviewed by classification staff prior to such inmate's cell assignment to determine if such inmate has known enemies from whom he should be separated; protective custody needs; or gang involvement. Information will be collected during the initial classification interview to determine if such inmate has assaulted other inmates during prior incarcerations, or has been a victim of an assault by another inmate during prior incarcerations, or fears he may be victimized by another inmate, or has gang affiliations or previous conviction for violent crimes. This information shall become part of an automated inmate information system, which shall be developed and implemented as soon as practicable, using good faith efforts but no later than nine months from the entry of this order to insure that potential victims are separated from known predators (i.e., inmates who have assaulted other inmates). All housing unit assignments will be made by classification staff only. Within six months after the entry of this order, all staff assigned to classification will complete a course of classification interviewing training designed to insure compliance with this order.
2. Housing. Any inmate who is classified as violent (a level V, VI, or VII on the current classification scale) shall never be housed in a cell with more than one other inmate. Whenever it becomes necessary to assign two inmates to the same cell, classification officers will not house potential victims with known predators. Furthermore, inmates classified as violent (i.e., those indicated by a red dot on the wrist band under the current classification system), and inmates with a known history of violence, will not be housed with inmates classified as nonviolent (indicated by a blue, green, or yellow dot on the wristband, under the current classifications). When a compatible housing assignment cannot be made, the inmate shall be housed in a single cell. As soon as reasonably possible, but no later than nine months after the entry of this order, the facility shall

implement a policy requiring single-celling for those inmates who have not yet been fully classified.

3. Inmates Supervision. A separate cell block officer shall be continuously assigned to each of the cell blocks in which inmates are incarcerated, on the lower level of the current jail facility whenever any of the cells in such cell block house two or more inmates. Each cell block officer shall monitor the cell block to which he/she is assigned continuously to assure the inmates housed together in the same cell are housed compatibly. Only under documented emergencies involving risk of safety to cell block officers or inmates will cell block officers supervise more than two adjacent cell blocks at a time, and shall only do so for the time period necessary to resolve such emergency. The continuous monitoring required by this order shall be implemented as soon as reasonably possible, but no later than nine months from the date of entry of this order.
4. Cell block officers assigned to housing duties on floors 2, 3, and 4 of the current jail facility will also continuously supervise individual cell blocks in which inmates are incarcerated to assure compatibility. Cell block officers may only be removed from their assigned cell blocks for documented emergencies involving risk of safety to cell block officers or inmates, and then only for the time period necessary to resolve such emergency. Under no circumstances shall a cell block officer supervise more than two adjacent cell blocks at a time. It is the intent of this order that there shall be a separate cell block officer assigned at all times to supervise each cell block in the current facility on floors 2, 3, and 4, when such cell block houses inmates and are not totally locked down for the entire shift. Every cell block shall have its own cell block officer continuously supervising such cell block except as otherwise allowed in this order. The continuous monitoring required by this order shall be implemented as soon as reasonably possible, but no later than nine months from the date of entry of this order.
5. Each cell block officer will insure that inmates are housed compatibly by frequent observation of behavior

of inmates in the cell block such cell block officer is supervising, and by confidentially interviewing inmates in the cell block to determine if the inmate's cell assignment is safe. In addition, cell block officers will interview any inmate in the cell block who the cell block officer believes may be having compatibility problems with other inmates. Inmates identified as having potentially violent cell mate compatibility problems will be promptly separated and referred to classification for review.

6. In general population cells on the second, third, and fourth floors, inmates will be permitted to move between their cell and the day room of the cell block during a five minute period each hour, unless such movement is otherwise restricted by jail operational procedures. During the remaining 55 minutes of the hour, the cell doors will remain locked. Inmates may remain in their cells, or the day room during those 55 minute periods. Cell block officers will continuously monitor the cells during these five minute periods when the cell doors are open to insure that no inmate enters a cell within the cell block to which such inmate is not assigned.<sup>4</sup>
7. Continuous direct observation of inmates by cell block officers is required during all out-of-cell activity in lock down and protective custody housing units.<sup>5</sup>

**D. Judge Turner's Consent Order And Final Order Granting Injunction, November 24, 1999 (the "Final Order").**

Judge Turner then entered the Consent Order Adopting Recommendations Of Special Master, Final Order Granting Injunctive

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<sup>4</sup> This policy is referred to as the 55/5 policy.

<sup>5</sup> Paragraphs 8, 9, and 10 of the Court Order dealt with the appointment of a Special Master to regularly inspect and report to the Court on compliance with the Order. The Special Master was instructed that if, after eighteen months, the Court Order had not made an impact in reducing the sexual and physical assaults in the Jail, the Special Master would propose other remedial relief that might be appropriate to correct the unconstitutional conditions.

Relief As To Conditions In The Shelby County Jail ("Final Order") on November 24, 1999. The Final Order stated that paragraphs 1-7 of the Court Order would remain in force until November 1, 2004. In addition, Judge Turner imposed the following additional requirements in the Final Order that would remain in effect until November 1, 2004:

- A. The defendants are to modify their record keeping at the Shelby County Jail to insure accurate collection of data as to violent incidents at the Jail. Specifically, the defendants are ordered to modify their record keeping to remedy the:
  - i Lack of consistency in the incident reports generated by jail staff with regard to classifying incidents (such as whether incidents are physical assaults, gang-related physical or sexual assaults, stabbings, etc.);
  - ii Lack of adequate safeguards in the computer system to insure the computerized incident reports are not altered or deleted at a later date;
  - iii Lack of adequate linkage in the incident reporting system whereby incidents involving numerous parties are cross-referenced to other inmates.
- B. It is further ordered that defendants are forbidden to regularly use overtime to staff cell block officer positions required by the Court Order. The defendants are to make good faith efforts to employ sufficient cell block officers to staff all positions required by the Court Order. If due to exceptional reasons, overtime must be utilized to staff a position, voluntary overtime should be used before the use of mandatory overtime. The defendants should in such cases use good faith efforts to cease using overtime to staff positions as soon as possible.

#### **E. October 12 and 16, 2000, Stipulation of Facts**

On October 12, 2000, the parties stipulated to certain facts that were relevant to the issues presented in the contempt proceedings:

1. The Shelby County Jail does not currently, and never has single celled inmates during the booking process.
2. The Shelby County Jail does not have a policy in effect requiring single celling for inmates who have not been fully classified.
3. An inmate upon his arrival at the Shelby County Jail initially goes through the booking and classification process. During the time in which the inmate is going through the booking and classification process, the inmate is normally detained either in a holding tank or in the hallway, with other inmates. Because the inmates going through booking and classification have not been fully classified, persons arrested on non-violent charges come into contact with inmates also awaiting booking and classification of unknown violent histories and propensities.
4. At times as many as 150 inmates may be awaiting completion of the booking and classification process.
5. Assaults by inmates on other inmates occur in the intake area of the Shelby County Jail.
6. Since the entry of the Court Order, there have been only three officers per shift regularly assigned to supervise inmates in the intake area.
7. During the night shift (10:00 p.m. - 6:00 a.m.) only 6 cell block officers have been assigned to the 3rd floor of the Shelby County Jail to supervise 16 cell blocks.
8. During the night shift (10:00 p.m. - 6:00 a.m.) only 6 cell block officers have been assigned to the 4th floor of the Shelby County Jail to

supervise 17 cell blocks.

9. During the night shift (10:00 p.m.-6:00 a.m.), cell block officers are supervising more than two adjacent cell blocks at a time.
10. The Gangster Disciples are responsible for many violent acts towards other inmates in the Shelby County Jail.
11. Inmates and correctional officers are fearful of the Gangster Disciples, and other gangs in the Shelby County Jail.
12. The Shelby County Jail regularly uses overtime to staff cell block officer positions required by the Court Order.
13. Since the entry of the Court Order, overtime has been used virtually every shift to staff cell block officer positions required by the Court Order.
14. The Special Masters [sic] status report filed with the Court dated September 22, 2000 contains true and accurate data as to the number of officers working overtime in the Shelby County Jail for the months of July, August and September 2000. The data contained in the report is typical with respect to the number of officers working overtime for all months since the entry of the Final Order.

The parties filed Supplemental Stipulations on October 16, 2000, which state that with regard to the initial Motion To Cite Defendants For Contempt Of Court:

- A. The single celling of inmates prior to full classification in the intake area.
  1. The Defendants have implemented a separation system whereby the people who are arrested and brought to the CJC [the Jail] are placed on:
    - a. One side of the intake area which was the former female intake side if they are arrested for aggravated or assaultive crimes

- b. The former men's side of the CJC if they are arrested for non-assaultive/non-aggravated crimes.
- 2. In October, 2000 the Defendants installed a rail and bench system whereby inmates can be handcuffed to a rail in the open area while they are awaiting processing through classification
- 3. In 1998 there were 65,354 prisoners brought into the intake area of the Shelby County Jail.
- 4. In 1999 there were 68,422 prisoners brought into the intake area of the Shelby County Jail.
- 5. In the year 2000 as of October 11, 2000 there have been 50,515 prisoners brought into the intake area of the Shelby County Jail.
- 6. The County has created a Jail Overcrowding Committee. It is chaired by A.C. Wharton, the Public Defender, and has representatives of the Attorney General's office, the jail, the Sheriff's Department, the Pre-trial Release Department, Memphis Police Department, Courts, and County Administration.
- 7. On June 15, 1998 by Resolution, the County created the office of Judicial Commissioner to expedite process for setting bonds for eligible inmates.
- 8. The County has initiated the construction of a new classification and intake area which is scheduled to be completed by January, 2002 which will speed up the intake process by providing six (6) parallel classification tracks as opposed to the one (1) track that exists in the current intake area of the jail.
- 9. On January 14, 1998, Dr. Richard Douglas Morgan was appointed Special Master by the Federal District Court Judge, Jerome Turner.

10. The monthly and Final Reports filed by the Special Master and Assistant Special Master read as follows: [the Reports were filed as exhibits 15-33 in the hearings on contempt]
- B. "The Defendants have repeatedly failed to continually supervise inmates . . ."
1. The Sheriff's Office requested and the County approved the following additional Jail personnel: [showing 388 new jailer positions approved from 1997-2000.]
2. The Shelby County Sheriff's Office has hired and trained Deputy Jailers to fill these posts as reflected in the attached list. [showing the number of Deputy Jailers hired and trained]

The parties further stipulated with regard to the Supplemental Motion To Cite Defendants For Contempt:

- A. "Defendants are forbidden to regular [sic] use overtime . . ."
1. The Defendants have taken steps to hire more deputy jailers in order to reduce the potential of using overtime as follows:
  - a. See responses in Paragraph I, B 1 and 2.
  - b. From April to September, 2000, the average absentee rate exclusive of vacation time of deputy jailers has been 13.5%.
  - c. As of October 7, 2000 the Shelby County Jail has 63 deputy jailer positions that are funded but unfilled. Currently interviews are under way to fill as many of those vacancies with qualified individuals as possible. The schedule for this process is as follows: [outlining the revised schedule for interviewing and hiring Deputy Jailers]
  - d. The Sheriff's Office has also determined that it has 51 positions currently filled by

deputy jailers which can be filled by qualified clerical personnel thus freeing up these 51 deputy jailers to fill posts in the jail. Efforts are underway to hire these qualified clerical personnel.

In addition to the facts to which the parties have stipulated, the Court received evidence over five days of hearings on the Motions To Cite Defendants For Contempt Of Court. The Court finds that clear and convincing evidence supports the following findings of fact on the issues before the Court in this case.

## **II. Finding of Facts**

### **A. Facts - Single Celling of Inmates**

The parties stipulated that there is no policy of single celling inmates in the booking process and that inmate on inmate assaults occur in the intake area while inmates are waiting to be booked. The evidence presented also shows that most assaults that take place in the intake area occur on saturation nights<sup>6</sup> when there can be as many as 150-175 inmates waiting to be processed. (Tr. at 464, 476.) These inmates are put into holding tanks with many other inmates, and, on saturation nights when there are too many individuals to fit in the tanks, the doors to the holding tanks are left open with inmates awaiting booking spilling out into the hall. (Tr. at 172, 464-66.) Having the doors open creates a

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<sup>6</sup> Saturation nights are usually Friday and Saturday nights when large numbers of individuals are arrested and brought to the Jail.

security risk for the officers in the intake area because the inmates are free to roam around the intake area. (Tr. at 465-66, 564.) However, having the doors closed creates a security risk to the inmates because the doors are solid doors with only a small window such that the officer in the intake area cannot see what is occurring in the holding tanks. (Tr. at 466.) In addition, the intake area is so congested that the noise level can make it difficult for the intake officers to hear an inmate screaming in the holding tanks. (Tr. at 471.) The Court also heard testimony that there is usually one assault per weekend during the saturation period in the intake area of the Jail.<sup>7</sup> (Tr. at 476.)

The Court also heard testimony and received evidence that on saturation nights, it can take as long as sixteen to eighteen hours to be processed by intake, so there are often inmates waiting in the holding tanks and hallways of intake for many hours. (Tr. at 480; Special Master Rept. at 7, Nov. 24, 2000.) Dr. Morgan, the Special Master in this case,<sup>8</sup> testified that Defendants could have

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<sup>7</sup> The Court heard testimony from James Norris, Jr., who was assaulted in the holding tank in the intake portion of the Jail. Mr. Norris was in the tank on a DUI arrest and was attacked by another inmate who attempted to steal the ring Mr. Norris was wearing. Mr. Norris' leg was broken in two places requiring surgery with pins to repair the damage. (Tr. at 28, 32.)

<sup>8</sup> Order of July 5, 2000, Reinstating Special Master And Assistant Special Master With Agreed Upon Special Authority. With reappointment, Dr. Morgan and his staff assumed by agreement certain additional investigative and monitoring functions regarding compliance with the Court Order. Dr. Morgan was originally appointed by Judge Turner in his Order of January 14,

utilized the temporary holding cells on the lower level of the Jail for single celling of inmates if Defendants had streamlined the intake process, thereby reducing the number of inmates waiting in the intake area. (Tr. at 563.) The staffing level at the Jail does not fluctuate with the demands of the saturation nights so that there are the same number of intake staff assigned to non-saturation nights as to saturation nights. (Tr. at 590.) The Court heard testimony that there are usually only three guards assigned to the intake area to provide security for the inmates, and only two guards if one of the guards takes a break, leaving a ratio of one guard for every 50-75 inmates in the intake area on a saturation night. (Tr. at 461-62, 475, 591-92.) The Court also heard testimony that, had Defendants been single celling inmates during the intake process, many incidents of inmate on inmate violence in the intake area would not have occurred. (Tr. at 173.)

#### **B. Facts - Supervision of the Inmates**

The Court heard testimony concerning supervision of the inmates of the Jail by the guards. The Court heard repeated testimony concerning the prevalence of gangs in the Jail, with the Gangster Disciples constituting the largest proportion of gang affiliation in the Jail. (Tr. at 390.) Gang members control the activities of the inmates within the pods in roughly 95% of the pods in the Jail. (Tr. at 180-81, 402.) The gang members

regularly post rules for the other inmates to follow upon penalty of physical violence. (Tr. at 61-63, 401-04.) The Court heard testimony concerning the organizational structure of the gangs in the Jail whereby gang activities are coordinated by a gang member designated by the gang as the "Institutional Coordinator" who is assisted by an "Assistant Institutional Coordinator." (Tr. at 391.) Each floor has two "Floor Coordinators," one for each side, and each pod has a "Pod Coordinator." (Tr. at 391-92.) The pod coordinator is assisted in enforcing the will of the gang through several "Chiefs of Security," as the numbers of gang members in the pods make possible. (Tr. at 392-93.) The gangs regularly circulate "kites" through the jail, which can either be incident reports or informational reports designed to give gang members in other pods information about an inmate, often with instructions to beat that inmate. (Tr. at 394-401.) Customarily, a pod coordinator will send a kite out of the pod describing an incident and requesting instructions from someone higher in the chain of command. (Tr. at 398-401.) The kite will be passed to the floor coordinator and then to the institutional coordinator as required, and then sent back to the pod coordinator with instructions. (Tr. at 398-401.) Often, the instructions are to punish a non-gang member or a gang member through physical violence, the most common of which is a three-minute beating by gang members. (Tr. at 401-02.) The institutional coordinator receives weekly reports on the

breakdown of gang members, gang affiliation, and non-gang members in each of the pods. (Tr. at 394-95.)

The gangs prohibit non-gang members from approaching the bars closest to the location of the guard assigned to that pod so as to prevent the inmates from receiving help from the guards or notifying them of what is happening in the pods.<sup>9</sup> (Tr. at 62, 89-90, 844-46.) The gangs also control access to the phones within the pods.<sup>10</sup> (Tr. at 61-62, 90-91, 847.) The gang members usually designate one of the two phones per pod for use exclusively by gang members. (Tr. at 61, 847.) The other phone can be used by the non-gang members only with permission of the gang members. Often, the phone can only be used by non-gang members to call friends or family to bring them money that can then be extorted by the gang members. (Tr. at 61, 90-91, 847.) The gang members also control the televisions in the pods, forbidding any non-gang member from even touching the television. (Tr. at 62, 91, 121, 849.) Gang members also require the non-gang members to wash the gang members'

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<sup>9</sup> This rule is the "3 and 15 rule" whereby the inmates are forbidden by gang members to go past cells 3 and 15 (which are across from each other) because that would put them close enough to the bars to communicate with the guard. The guard (i.e., deputy jailer) is typically seated in a chair across the hall from the sally port (and 20 to 25 feet away from the sally port) (observation of the Court during tour of the Jail, Sept. 24, 2000).

<sup>10</sup> Inside the pods there are two phones that are placed such that, in order to exercise control over the phones, the guard would have to enter the pod. As a result, the inmates have unfettered access to the phones within the pods.

clothes, clean their cells, and do other work for the gang members, on penalty of physical violence. (Tr. at 293, 849-850.) The gang members also regularly take the commissary of non-gang members, or require the non-gang members to purchase items for the gang members through the commissary. (Tr. at 122, 153-54, 848.)

The gang members also organize brawls in the pods called "Thunderdome," "Smackdown," or "A Side vs. B Side." (Tr. at 50-60, 64-72, 79-87, 95-109, 112-20, 123-28, 144-49, 160-61.) The gang members force non-gang members to fight gang members for sport. (Tr. at 50-60, 64-72, 79-87, 95-109, 112-20, 123-28, 144-49, 160-61.) The winner is often given a "Championship Belt" made of cardboard and tin foil. (Tr. at 145.) If an inmate refuses to participate in one of these brawls, the gang members beat, often seriously, and hogtie the inmate in one of the cells, out of the line of sight of the guard.<sup>11</sup> (Tr. at 50-60, 64-72, 79-87, 95-109, 112-20, 123-28, 144-49, 160-61.) The inmates that testified as to participation in the Thunderdome events stated that the guards monitoring the pods in which these events occurred were either not

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<sup>11</sup> The Court heard testimony of both the injuries sustained in the Thunderdome incidents and the brutal punishment inflicted upon those refusing to participate. Manuel Gonzales, Jr., testified to being punched and kicked, resulting in a broken jaw from a Thunderdome event. Likewise, Larry Graham testified that he was hogtied and beaten unconscious by gang members from refusing to participate in the Thunderdome event. An inmate testifying as John Doe for security reasons stated that he had been grabbed with a rope around the neck and beaten for refusing to participate before a guard heard him screaming and ordered the other inmates to release him.

on their posts when the Thunderdome fights happened, were on the post and did not stop the fights, or were asleep on the post. (Tr. at 53-54, 56, 67-68, 96-97, 104-05, 115, 124, 126, 148, 160-61.)

The testimony revealed that the non-gang members are afraid of the gang members. In the vast majority of the incidents where an inmate is beaten by a gang member, the victim will not press charges for fear of retaliation by the gang. (Tr. at 59-60, 106-09, 413.) Even when the inmates do press charges, often nothing is done because the disciplinary office is routinely closed due to staff shortages. (Tr. at 287-89, 665-69, 854.) If a hearing is not held on an incident report within 72 hours, the charges are dropped. (Tr. at 287-88, 661-63.) It is common knowledge among the inmates and guards that many of the incident reports are never acted upon. (Tr. at 287-89, 851-52.)

In addition to inmates being intimidated by gang members, many guards are likewise afraid of gang members. (Tr. at 298-99, 851-53.) This fear often causes the guards to refrain from punishing the inmates or writing up the inmates for violations. (Tr. at 851-53.) Many guards are intimidated by the gang members because of the murder of Sergeant Dedrick Taylor who was killed by gang members outside the jail as a result of a "hit" that had been ordered from a phone in a pod within the Jail. (Tr. at 298, 856.) This fear of inmates often makes controlling the inmates difficult and increases the risk to other inmates of physical violence. (Tr.

at 298, 856.)

The Court also heard testimony showing that while the Jail has a Gang Task Force, that Task Force consists of one officer who intercepts kites and gathers information on the gang strength in the Jail but does not report the information to anyone.<sup>12</sup>

Finally, even after Plaintiff's Motions were filed, the Special Master and his staff have reported to the Court that they have found repeated falsifications of time records of catwalk rounds of the guards and guards not at their assigned posts for protracted lengths of time. (Special Master Rept., Nov. 24, 2000.) The Special Master in his Report states he has also found many cell violations, such as having the window to the catwalk obstructed,<sup>13</sup> the light bulb removed, the bars covered, or the bottom bunk obscured making supervision of the cells impossible in many

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<sup>12</sup> The testimony of the Gang Task Force Officer demonstrated that the evidence of gang activities and kites were piled in boxes in the Task Force Office, and that although the Gang Task Force Officer knew the identity of the institutional coordinator in the Jail, nothing had been done to prevent that individual from access to phone and mail within the Jail. (Tr. at 418, 423-25.) The Gang Task Force Officer testified that none of his superiors ever asked him about his knowledge of the identities of the gang members in the gang hierarchy in the Jail, nor did they ever instruct him to disseminate that information to others in the Jail. (Tr. at 424.) Sheriff Gilless testified that he rarely interacted with the Gang Task Force Officer. (Tr. at 704.)

<sup>13</sup> If the window facing the catwalk is obstructed, the guard cannot see into the cell from the catwalk, thus preventing supervision of the inmates in the cells. The only way to see into the cell would be to enter the pod and look into the cell from the front.

occasions. (Special Master Rept., Nov. 24, 2000.)

**C. Facts - 55/5 Policy**

The Court also heard testimony that the 55/5 policy required by the Court Order is not being uniformly followed. (Tr. at 60, 148-49, 284.) Many of the guards are not trained in the policy and, while some pods run the 55/5 policy, others leave the cell doors open for periods longer than five minutes. (Tr. at 60, 148-49, 284.) Furthermore, the guards do not watch the inmates while the cell doors are open to ensure that only inmates enter only the cell to which they are assigned. (Tr. at 284-286.) The guards are physically prevented from such observation because the mechanism for opening and closing the cell doors is located such that an officer cannot see which inmate enters which cell. (Tr. at 286, 863-65.)

**D. Facts - Overtime**

The parties stipulated to the fact that Defendants have been using mandatory overtime to staff positions required by the Court Order in nearly every shift since the Court Order was entered. The Court also heard testimony that Defendants have only posted job openings for deputy jailers once in the year preceding the Motions To Cite Defendants For Contempt Of Court. (Tr. at 1047, 1088.) Defendants have advertised outside of Shelby County and have recruited at military bases for new deputy jailers but have failed to fill the Court-ordered posts so that mandatory overtime is not

needed. (Tr. at 1016, 1091.)

**E. Facts - Backlog of Inmates In the Jail**

The Court also requested substantial information from Defendants with regard to the population of the Jail and the disposition of inmate cases. The Court received reports from the Shelby County Information Technology Department that showed that on December 6, 2000, there were four hundred and nineteen (419) inmates in the Jail who had been there for sixty (60) days or more without being indicted on the charge that had brought them into the Jail.<sup>14</sup> (Defs.' Eighth Supp. Resp., Ex. B.) Other reports to the Court show that many charges for inmates at the Jail linger unindicted for anywhere from one to four years from the arrest date. (Defs.' Tenth Supp. Resp., Ex. C.) In addition, the criminal justice system in the County operates an information system in which the Attorney General's office has declined to participate. (Tr. at Oral Argument, December 8, 2000, at 23-25.) The result of these delays in communications, delays in bringing indictments, and delays in disposing of cases is that the population of the jail swells, exacerbating the problems of

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<sup>14</sup> Some of the individuals on this list had been indicted on charges other than the one(s) for which they were incarcerated and for which they remained unindicted. However, the testimony about the report demonstrated that these unindicted charges would keep these individuals in the Jail even if all of the other charges against them were disposed of.

controlling and supervising the inmates.<sup>15</sup> (Tr. at 1203-05.)

### III. Application of the Law

#### A. Standard For Civil Contempt

Plaintiff moves the Court to find Defendants in civil contempt of the Court Order and the Final Order. In a civil contempt proceeding, the burden is on the petitioner to "prove by clear and convincing evidence that the respondent violated the court's prior order." Glover v. Johnson, 934 F.2d 703, 707 (6th Cir. 1991). A party may be found in contempt if the petitioner shows that the respondent "violate[d] a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." Id. (quoting NRLB v. Cincinnati Bronze, Inc., 829 F.2d 585, 591 (6th Cir. 1987)). In a contempt proceeding, "the basic proposition [is] that all orders and judgments of courts must be complied with promptly." NRLB, 829 F.2d at 590 (quoting Jim Walter Res., Inc. v. Int'l Union, United Mine Workers, 609 F.2d 165, 168 (5th Cir. 1980)). As the Sixth Circuit has held, "civil contempt may be either intended to coerce future compliance with a court's order, or to compensate for the injuries resulting from the noncompliance." Glover v.

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<sup>15</sup> These delays also increase the financial burden on Shelby County since each additional day an inmate stays in the Shelby County Jail because of unresolved criminal charges costs Shelby County approximately \$50.00.

Johnson, 199 F.3d 310, 313 (6th Cir. 1999) (internal citations omitted). Good faith is not a defense in civil contempt proceedings. Glover, 934 F.2d at 708. Likewise, wilfulness is not an element of civil contempt, but the state of mind of the contemnor is relevant only in the consideration of sanctions. Rogers v. Webster, 776 F.2d 607, 612 (6th Cir. 1985). The standard is whether "the defendants took all reasonable steps within their power to comply with the court's order," which includes whether the defendants have "marshal[ed] their own resources, assert[ed] their high authority, and demand[ed] the results needed from subordinate persons and agencies in order to effectuate the course of action required by the [court's order]." Glover, 934 F.2d at 708.

#### **B. Discussion**

Plaintiff moves the Court to find Defendants in contempt of court on four primary issues: (1) Defendants have not implemented a policy requiring single celling for inmates who have not been fully classified, (2) Defendants are not supervising inmates sufficiently and ensuring the inmates are housed compatibly, (3) Defendants are not implementing the 55/5 provision of the Court Order, and (4) Defendants are regularly using overtime to staff cell block officer positions. The Court will discuss each of these issues in turn.

## 1. Single Celling of Inmates

The parties do not dispute that Defendants are not single celling inmates during the booking process. The parties stipulated that the Jail does not currently and never has single celled inmates during the booking process and that the Jail does not have a policy in effect requiring single celling for inmates who have not yet been fully classified. The dispute is whether Defendants were required by the Court Order to single cell inmates during the booking process. The language in dispute is from Paragraph 2 of the Court Order:

Housing. Any inmate who is classified as violent (a level V, VI, or VII on the current classification scale) **shall never** be housed in a cell with more than one other inmate. Whenever it becomes necessary to assign two inmates to the same cell, classification officers will not house potential victims with known predators. Furthermore, inmates classified as violent (i.e., those indicated by a red dot on the wrist band under the current classification system), and inmates with a known history of violence, will not be housed with inmates classified as nonviolent (indicated by a blue, green, or yellow dot on the wristband, under the current classifications). When a compatible housing assignment cannot be made, the inmate shall be housed in a single cell. **As soon as reasonably possible, but no later than nine months after the entry of this order, the facility shall implement a policy requiring single-celling for those inmates who have not yet been fully classified.**

(emphasis added.) Plaintiff argues that the Court Order, by its plain meaning, requires single celling in the intake process because by definition, the inmates in the intake process have not been fully classified. Defendants argue that the requirement for

single celling is in the section of the Court Order entitled "Housing," and therefore the requirement prevents inmates from being put in housing cells prior to being fully classified if that housing assignment is to a cell with more than one inmate. Defendants rely on the definition of a cell included in the Court Order, which is "an individual living area for one or two inmates, that contains at least one bunk, a toilet, and a wash basin." Therefore, Defendants argue, the provision on single celling deals with areas where inmates are housed, rather than the holding tanks in the intake area. The Court finds Defendants' arguments unpersuasive on this point. The Court finds that the Court Order is clear on its face that inmates not fully classified are to be single celled, and that the single celling requirement by definition extends to inmates in the intake area. This understanding is further supported by the context of the Court Order and the history of the case.

The classification process that existed at the time Judge Turner entered the Court Order was that inmates were brought into the Jail where they were partially classified, then put into two-man cells on the first floor adjacent to the intake area. Once they were fully classified, they were given permanent housing assignments. In 1996, Judge Turner entered a consent order stipulating liability of Defendants for violation of Plaintiff's Eighth Amendment rights. The parties were given 120 days to submit

a proposed order to alleviate the unconstitutional aspects of the Jail. The parties, through the consultation of the experts appointed in the case, Charles Fisher, Ray Nelson, and Bill Garnos, designed a remedial plan that, in large part, became the Court Order. The provision on single celling was the most disputed point among the experts, ultimately resolved by Judge Turner since the experts were unable to agree on the plan. Judge Turner made specific findings of fact that on a weekend night, there may be 125-150 inmates waiting in the booking area that are either in holding tanks or in the hallways of the intake area. The Jail placed individuals in cells on the lower level prior to full classification, which resulted in the possibility of a non-violent inmate being placed in a cell with a violent inmate. The Court also found that factors that reduce the incidence of violence and sexual assault in the jail are (1) continual supervision of the inmates, (2) properly classifying inmates and separating inmates who are likely to assault other inmates, and (3) separating inmates who are likely to be victims of assault. Judge Turner then entered the Court Order that gave specific instructions concerning placement of inmates within cells in the Jail, which required among other things that inmates who had not been fully classified be placed in single cells.

There is no question that inmates in the intake area have not been fully classified. Defendants argue, though, that because most

of the prisoners in the intake area are in holding tanks rather than in cells, the Court Order does not apply to the intake area. However, the definition provided in the Court Order for the word "cell" does not limit the scope of application of the Court Order within the Jail, but rather defines the area into which inmates must be placed prior to full classification. Prior to full classification, the inmates in the Jail must be placed alone into a cell as defined by the Court Order. Neither the fact that the Court Order did not specifically state that the single celling requirement applied to the holding tanks nor the fact that Defendants had never single celled inmates in the booking process affects the applicability of the single celling requirement to the intake area. The instructions of the Court Order were to change a variety of the procedures at the Jail, including the procedure allowing potentially assaultive inmates to mingle with potential victims, which happens every day in the intake area of the Jail.

Mr. Fisher, the Court-appointed expert who was involved in drafting the remedial plan, testified that he understood the sentence to mean that inmates would be single celled in the booking process, (Tr. at 210-12), and Dr. Morgan, the Special Master, testified that he understood the provision to apply to the booking process, (Tr. at 645-46). After Defendant Shelby County decided to build a new Annex to the Jail, Dr. Morgan was assured by Chief Harper and Captain Dowdy that the new Annex would have single cells

for inmates in the preclassification area. (Tr. at 646-47.) Based on this assurance, Dr. Morgan wrote in the Final Report And Recommendation that Defendants were in compliance with the single celling requirement. (Ex. 33, Special Master's Final Rept. And Recommendations at 2.) However, Dr. Morgan wrote in the Special Master's Report filed on September 22, 2000, that

The Special Master's Final Report and Recommendation was based on a good faith effort indicated by the Jail Administration that the new building would have individual cells for single celling inmates prior to classification. The good faith argument has since evaporated; not only is the new classification building not built, but when it is built the inmates awaiting classification will still not be single celled.

(Ex. 28, Special Master's Rept., September 22, 2000, p. 4.)

After the Court Order went into effect, Defendants ceased putting individuals in the lower level cells prior to full classification, but instead left them in the holding tanks in the intake area until they were fully classified. The result was to move from a system whereby two inmates of unknown criminal histories were placed in a cell together, to one where ten or more inmates of unknown criminal histories are put in a holding cell together. This result goes squarely against the direction of the Court Order, particularly when considered in the context of Judge Turner's Findings of Fact with regard to the factors that would reduce the level of assault and sexual assault of one inmate on another. It is true that Defendants did cease the preclassification celling practice that was in place at the time of

the Court Order, but Defendants did so in the opposite manner of what the Court Order required, which was separation of individuals of unknown criminal histories and criminal propensities until those histories were known, so as to make housing decisions pairing violent inmates with other violent inmates and non-violent inmates with other non-violent inmates.

Defendants also direct the Court to the Prison Litigation Reform Act ("PLRA") to demonstrate that they are not in contempt of the Court Order with regard to single celling inmates in the intake area because the PLRA states that

Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

28 U.S.C. § 3626(a)(1)(C) (1994). At oral argument, Defendants argued that the cost of building a facility that could single cell inmates in the booking process would cost fifteen million dollars (\$15,000,000.00), as stated in Judge Turner's Findings of Fact. (Tr. Oral Argument at 107.) Defendants argue that in the Notice of Compromise Plan, (Ex. 6), the experts stated

The original plans submitted by plaintiff and defendants requested the Court to order the hiring of additional guards, and contemplated an increase in the number of "single cells" available in which to house violent inmates. The experts after much discussion have agreed to change the focus of the remedial plan, to get away from set numbers of guards and numbers of single cells. Rather, the experts propose the Court order [sic] an improved classification system, and increased supervision by guards. The experts believe that it obviously will

cost less and be a less intrusive to employ guards to monitor inmates, rather than build an additional facility.

The argument, by implication, is that the Court Order could not have meant that inmates in the booking process had to be single celled because (1) the experts designing the remedial plan shifted their attention away from single celling to increased supervision and (2) Defendants would have had to build a new facility in order to single cell the preclassification inmates, in violation of the PLRA. However, there are two aspects to this argument that are faulty. The first is that whatever the experts recommended to the Court is irrelevant at this stage. The experts' proposals that became the Court Order had the single celling requirement in the proposed order with a sentence in brackets following the single celling requirement that said, "[Defendant proposes deleting this previous sentence]." (Ex. 6 at 5.) However, the Court did not delete that sentence and entered a remedial order adopting Plaintiff's proposal that specifically stated that prior to full classification, inmates must be single celled. Therefore, no matter what the experts proposed, the Court Order included the single celling requirement. The second fault of the argument is that there are a sufficient number of cells on the lower level and in the Jail in general to single cell inmates in the booking process had Defendants reduced the overall population within the Jail and streamlined the intake process so as to reduce the numbers

of individuals waiting to be processed at any one time. (Ex. 39) (showing 168 cells in one area of the intake area and 42 cells in another area.) Dr. Morgan testified that, with a speedier intake process, the Jail could have single celled the inmates during the intake process. (Tr. at 563.)

Certainly the Court Order does not require Defendants to build a new facility with sufficient numbers of cells in the intake process to allow single celling, but Defendants have not shown that they marshaled their resources and took every reasonable step to comply with the Court Order. On the contrary, the County, while this case was pending and with full knowledge of the Court Order, was planning and later commenced construction on the Annex to the Jail that will have a new intake area with no single cells available for inmates in the booking process. (Ex. 40.) Furthermore, Defendants represented to the Special Master that the new intake area would solve the single celling problem the Jail faced under the Court Order. It would be one thing if Defendants could point to any steps they have taken to meet the single celling requirement of the Court Order, or if they asked for a clarification or modification of the Court Order, but there is simply no evidence in the record to demonstrate that Defendants have done anything to comply with the single celling requirement.<sup>16</sup>

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<sup>16</sup> It may be that it is possible to meet the safety requirements of the inmates through prospective orders that do not involve single celling, but that is an issue for the remedial

Rather, Defendants merely chose to put inmates in a slightly different dangerous situation than the one they were in prior to the Court Order. As such, the Court hereby FINDS that Defendants are in contempt of the Court Order with regard to single celling of inmates prior to full classification.

## **2. Supervision of Inmates**

Plaintiff also moves the Court to find Defendants in contempt of paragraphs 3, 4, and 5 of the Court Order relating to supervision of inmates. Specifically, Plaintiff moves the Court to find that (1) Defendants are not staffing the third and fourth floors of the Jail during the night shift in compliance with paragraph 4 of the Court Order and (2) Defendants are failing to supervise the inmates and to ensure compatible housing assignments. Defendants argue that they have complied with the Court Order by assigning guards to the requisite number of Court-ordered posts and any injuries sustained by the inmates are individual failures of the guards assigned, not systemic failures of the Defendants in failing to provide guards to supervise the inmates. In addition, Defendants argue that the Court Order exempts shifts in which the inmates are completely locked down from the requirements of one guard per pod and no fewer than one guard per two adjacent pods.

As in all cases, the first inquiry is the text of the Court

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phase of this case and does not go to the issue of contempt. Defendants have not complied with this provision and that lack of compliance puts them in contempt of Court.

Order with regard to these provisions. First, the Court Order specifically requires:

3. Inmates Supervision. A separate cell block officer shall be continuously assigned to each of the cell blocks in which inmates are incarcerated, on the lower level of the current jail facility whenever any of the cells in such cell block house two or more inmates. Each cell block officer shall monitor the cell block to which he/she is assigned continuously to assure the inmates housed together in the same cell are housed compatibly. Only under documented emergencies involving risk of safety to cell block officers or inmates will cell block officers supervise more than two adjacent cell blocks at a time, and shall only do so for the time period necessary to resolve such emergency. The continuous monitoring required by this order shall be implemented as soon as reasonably possible, but no later than nine months from the date of entry of this order.
4. Cell block officers assigned to housing duties on floors 2, 3, and 4 of the current jail facility will also continuously supervise individual cells blocks in which inmates are incarcerated to assure compatibility. Cell block officers may only be removed from their assigned cell blocks for documented emergencies involving risk of safety to cell block officers or inmates, and then only for the time period necessary to resolve such emergency. Under no circumstances shall a cell block officer supervise more than two adjacent cell blocks at a time. It is the intent of this order that there shall be a separate cell block officer assigned at all times to supervise each cell block in the current facility on floors 2, 3, and 4, when such cell block houses inmates and are not totally locked down for the entire shift. Every cell block shall have its own cell block officer continuously supervising such cell block except as otherwise allowed in this order. The continuous monitoring required by this order shall be implemented as soon as reasonably possible, but no later than nine months from the date of entry of this order.

5. Each cell block officer will insure that inmates are housed compatibly by frequent observation of behavior of inmates in the cell block such cell block officer is supervising, and by confidentially interviewing inmates in the cell block to determine if the inmate's cell assignment is safe. In addition, cell block officers will interview any inmate in the cell block who the cell block officer believes may be having compatibility problems with other inmates. Inmates identified as having potentially violent cell mate compatibility problems will be promptly separated and referred to classification for review.

(emphasis added.) The Court Order first requires that there be one cell block officer assigned to continuously supervise each and every cell block on the lower level and on floors 2, 3, and 4. In paragraph 4, the Court Order states that "[i]t is the intent of this order that there shall be a separate cell block officer assigned at all times to supervise each cell block in the current facility on floors 2, 3, and 4, when such cell block houses inmates and are not totally locked down for the entire shift." Defendants argue that since inmates are locked down for the entirety of the night shift, there is no requirement that there be one cell block officer per two adjacent cell blocks. However, Defendants mistakenly apply the "lockdown" clause as a modifier to the sentence that precedes the quoted language rather than only to the sentence in which it appears. The previous sentence states that "[u]nder no circumstances shall a cell block officer supervise more than two adjacent cell blocks at a time," and the sentence after the "lockdown" clause states that "[e]very cell block shall have its own cell block officer continuously supervising such cell block

except as otherwise allowed in this order." Read in context, there is an overall requirement that there be at least one cell block officer continuously monitoring no more than two adjacent cell blocks, and only when the Court Order specifically allows less than one cell block officer per cell block. The obvious question is when are such deviations from the one guard to one cell block requirement allowed? The answer is in periods of documented emergencies and when the cell block is locked down for the entire shift. In those two circumstances, one guard can be assigned to more than one cell block, but to no more than two adjacent cell blocks. Defendants are in contempt on this issue. The parties stipulated that in the nighttime shifts on floors three and four, there are only six (6) officers assigned to sixteen (16) and seventeen (17) cell blocks, respectively. The stipulations make it clear that Defendants are violating the one guard per two adjacent cell blocks rule.

In addition, Defendants argue that they are not in contempt with regard to the adequacy of the supervision provided over the inmates because they have provided sufficient numbers of guards to supervise the inmates. Any failure to protect inmates from one another due to assigned guards not supervising the inmates is the fault of the individual guard, not the Defendants. The Court finds this argument unpersuasive. One of the major points of the Court Order was to increase the numbers of guards to continually

supervise the inmates to ensure compatible housing to prevent them from doing violence to each other. It is true that Defendants have assigned guards to these cell blocks, but there is no evidence to demonstrate that the guards are adequately supervising the inmates to ensure that the pods to which they are assigned are safe and compatible housing assignments. Rather, the evidence presented demonstrates that gang members control the daily life of the inmates in 95% of the pods; that the gangs run organized brawls between gang members and non-gang members; that the gang members post rules in the pods that are imposed on other inmates upon threat of physical violence; that non-gang members are forced to do labor for gang members; that the gangs extort money and commissary from the non-gang members; that the gangs control access to the phones; that the gangs control the televisions in the pods; that the gangs prohibit other inmates from talking to the guards; that the gangs have an efficient hierarchy of authority and information dissemination that can cause an inmate anywhere in the Jail to be assaulted; that the gangs enforce all of these conditions with brutal physical beatings; and that the guards generally do not interfere with the gangs' authority because the guards are afraid for their safety and the safety of their families. The Court heard testimony from inmates who had been assaulted in the Jail, both in Thunderdome events and for failing to participate in them, that the guards responsible for supervising the pods to prevent the inmates

from assaulting each other were either away from their assigned posts, aware of the assault but failed to stop them, or asleep. In addition, the Special Masters have repeatedly found falsification of time records<sup>17</sup> of the catwalk rounds required of the guards, which demonstrates that the inmates are not being properly supervised. This level of supervision simply does not constitute adequate supervision of inmates. Under Defendants' argument, they cannot be in contempt of court based on the adequacy of supervision provided the inmates by the guards so long as Defendants have assigned the requisite number of guards to the posts. However, the standard for determining whether a party is in civil contempt requires the contemnor to have demanded the results needed from subordinate persons to effectuate the court's order. In the absence of any evidence demonstrating systematic and effective review mechanisms to ensure that the guards are carrying out the requirements of the Court Order, the testimony and evidence presented to the Court demonstrates that the inmates in the Jail are routinely subjected to physical assaults and rapes due to the failure of Defendants to exercise adequate control and supervision of the inmates. Therefore, the Court FINDS Defendants in contempt of Court on the issue of inmate supervision.

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<sup>17</sup> Special Master's Rept., Nov. 24, 2000. These findings were made even after Plaintiff's Motions were filed and demonstrate continued violations of the requirements in the Court Order for continuous supervision of the inmates to reduce violence in the Jail.

### 3. 55/5 Provision

Plaintiff also moves the Court to find Defendants in contempt with regard to the 55/5 provision required in paragraph 6 of the Court Order. Defendants argue that Plaintiff has not met the burden of demonstrating clear and convincing evidence that the 55/5 policy is being violated in anything but an individual and limited basis. Plaintiff points to the testimony of the inmates and Sergeant Willet to show that the 55/5 policy is not being implemented. Defendants argue that this is not enough to show widespread failure. However, the Court also heard testimony from Assistant Special Master Curtis Shumpert who stated that in his opinion Defendants were not in compliance with the Court Order because on his inspections he regularly found anywhere from three to five inmates in an individual cell in direct violation of the 55/5 policy. Mr. Shumpert also stated that it is impossible for the guard to continuously monitor which inmates are going in and out of which cells because the mechanism for opening and closing the cell doors is placed such that the officer cannot see into the pod. Similarly, Sergeant Willet, who is in a supervisory capacity at the Jail, testified that she had never been trained on the 55/5 policy nor knew of any member of the Jail staff that had been trained in the policy. Defendants have not put forward any evidence to demonstrate that they are enforcing the 55/5 policy, either through requiring officers to abide by the policy,

disciplining officers for not abiding by the policy, modifying the cell door mechanism to allow continuous observation, or any other means which would ensure the safety of the inmates in the pods. Rather, the evidence, which the Court FINDS clear and convincing, is that Defendants have not taken all reasonable steps to comply with the Court Order. Therefore, the Court FINDS that Defendants are in contempt of Court with regard to the 55/5 policy.

#### **4. Overtime**

Finally, Plaintiff moves the Court to find Defendants in contempt of Court for regularly using overtime to staff the Court-ordered posts in the Jail in violation of the Final Order. Defendants stipulated that they are in contempt of Court on this issue but assert that they have taken all reasonable steps to comply with the Final Order and are therefore immune from liability. However, the evidence demonstrates that in the past year, Defendants have posted job openings for additional Deputy Jailers only once. In addition, the proof elicited at the hearings showed that Shelby County commissioned a study to determine how to better attract and retain Deputy Jailers, which stated that pay parity with Deputy Sheriffs was critical to long term retention, yet Defendants have not raised Deputy Jailer salaries to the same level as Deputy Sheriffs. Defendants did request a nine percent (9%) raise for Deputy Jailers in 1998 and did authorize a bonus of \$1,250.00 in 1999 that became a permanent pay raise (Tr. at 705),

but that amount in no way approximates the difference between a Deputy Jailer's salary and a Deputy Sheriff's salary even after only one year on the job, (Ex. 48) (showing an entry level salary of \$26,100.00 for Deputy Sheriffs that jumps to \$36,960.00 after the first year compared to an entry level salary of \$25,983.00 for a Deputy Jailer that jumps to \$28,608.00 after the first year). Likewise, Defendants have done nothing to attempt an exemption from the requirement that a Deputy Jailer must reside within the county, nor taken any steps to speed up the approval process for potential hires. In fact, Chief Jailer Hopkins stated that he had no answer when asked how the County was using good faith efforts to comply with the Court Order with regard to hiring sufficient individuals so that the Jail would no longer need overtime to staff the Court-ordered posts. Instead, all the evidence demonstrates that Defendants have used mandatory overtime on virtually every shift since the Final Order. Defendants have not taken all reasonable steps to achieve compliance. Accordingly, the Court FINDS Defendants in contempt of Court on the issue of use of overtime to staff Court-ordered posts.

#### **IV. Conclusion**

The Court FINDS that Defendants have not marshaled their resources, asserted their high authority, nor demanded the results needed from subordinate persons and agencies in order to effectuate the course of action required by the Court's orders. Rather,

Defendants have made little effort to comply with the Court Order and the Final Order entered by Judge Turner.

Therefore, the Court GRANTS Plaintiff's Motion and FINDS Defendants in contempt of Court on the provisions of the Court Order and the Final Order regarding single celling of inmates not fully classified, inmate supervision, the 55/5 policy, and use of overtime to staff Court-ordered posts. The parties are ORDERED to submit, by 2:00 p.m. on Thursday, January 4, 2001, short-term remedial plans setting out how Defendants will immediately assert a level of supervision and control<sup>18</sup> over the inmates of the Shelby County Jail consistent with the Orders of this Court. The Court also SETS a conference with the parties to discuss and consider the short term plans and to set a schedule for long term remedial plans at 3:30 p.m. on Friday, January 5, 2001. All costs of the petition are assessed against the Defendants.

Entered this 22 day of December, 2000.

  
JON P. McCALLA  
UNITED STATES DISTRICT JUDGE

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<sup>18</sup> The plans may include specific details such as (1) how to obtain control over use of the telephones, (2) how to obtain control over use of the televisions, (3) how to obtain effective enforcement of the 55/5 policy, (4) how to obtain effective enforcement of the direct observation requirements of the Orders of this Court, (5) how to eliminate cell violations, (6) how to implement internal disciplinary procedures as to inmate write-ups, (7) how to effectively protect potential victim inmates from potential predator inmates, and (8) other appropriate immediate remedial steps.